

Memorandum



Subject	Date
Non Lawful Permanent Resident Repapering	March 14, 2000
To	From
Board Legal Staff	Lori L. Scialabba Vice Chair

Under section 309(c)(3) of IIRIRA, the Attorney General may elect to terminate deportation proceedings, in which there has not been a final administrative order, and reinstate the proceedings as removal proceedings. The purpose of this provision is to make available to the alien in removal proceedings, relief which would not otherwise be available to him or her in deportation proceedings under an Order to Show Cause that was issued prior to April 1, 1997. This is referred to as "repapering."

Pursuant to regulations expected to be promulgated by the Attorney General, certain aliens in deportation proceedings, who are not eligible for suspension of deportation under section 244(a) of the Immigration and Nationality Act (Act) because their Orders to Show Cause were issued before they accumulated 7 years of continuous physical presence (the stop-time rule), but who may be statutorily eligible for cancellation of removal under section 240A(b) of the Act if repapered, may be eligible to request repapering. Until this regulation is promulgated, to ensure that such aliens will be able to avail themselves of the opportunity to request repapering when the regulation is published, the Board plans to administratively close the proceeding of any alien who appears eligible for non-LPR repapering.

Please note that repapering will not be appropriate for aliens who qualify for special rule cancellation under section 309(c)(5)(C) of IIRIRA, as amended by section 203(a)(1) of NACARA, since the stop-time rules do not apply to these aliens (Salvadorans, Guatemalans, and nationals of any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, or any state of the former Yugoslavia).

CRITERIA

An alien may qualify for non-LPR repapering, if he or she :

1. is not a lawful permanent resident;
2. is not subject to a final administrative order (NOTE: do not circulate an administrative closure order if what is pending before the Board is a motion to reopen to apply for suspension of deportation or if the type of proceeding is an appeal from an IJ denial of a motion to reopen - these are considered administratively final decisions);
3. is otherwise eligible for suspension of deportation under former section 244(a) of the Act, but for the application of the stop-time rule;
4. is eligible for cancellation of removal under section 240A(b) of the Act if repapered.

ELIGIBILITY FOR SUSPENSION OF DEPORTATION

The alien is considered otherwise eligible for suspension of deportation, as mentioned above, if he or she:

1. is in deportation proceedings;
2. demonstrates good moral character;
3. was not denied suspension of deportation for another reason (e.g. for lack of good moral character or for lack of a showing of extreme hardship to himself or a qualifying relative).
NOTE: If the Immigration Judge found the alien lacked good moral character or did not demonstrate extreme hardship, that finding must be reviewed on the merits.
 - a. If you agree that the alien lacked good moral character or did not demonstrate extreme hardship, then do not issue an administrative closure order. Proceed to an order on the merits, acknowledging that the case is not appropriate for non-LPR repapering.
 - b. If you find that the Immigration Judge erred in denying suspension based on a lack of good moral character or extreme hardship, and if the alien is now barred by the stop time rule, then the case may be administratively closed if appropriate.

ELIGIBILITY FOR CANCELLATION OF REMOVAL

To be eligible for cancellation of removal, as mentioned above, the alien must:

1. have been physically present in the United States for a continuous period of 10 years;
2. be a person of good moral character during all that time;
3. not have been convicted of any of the criminal offenses listed in sections 212(a)(2), 237(a)(2), or 237(a)(3) of the Act;
4. have a United States citizen or lawful permanent resident spouse, parent, or child;
5. not be in the class of aliens statutorily barred from relief under section 240A(c) of the Act (e.g. crewmen, nonimmigrant exchange graduate training, security grounds, persecutor, or has previously been granted suspension or cancellation),
6. not be in the class of aliens barred from cancellation by the stop-time rule in section 240A(d)(1) of the Act (i.e. must have 10 years continuous physical presence at the time of administrative closure) or the criminal stop-time rule (i.e. must have 10 years continuous physical presence before the alien committed an offense referred to in section 212(a)(2) which would render him or her inadmissible to the United States under section 212(a)(2) or removable from the United States under sections 237(a)(2) or (4)) :
7. not have departed the United States for any period in excess of 90 consecutive days or any periods which in the aggregate exceed 180 days.